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09/822,121	03/30/2001	Antonio J. Colmenarez	US010080	8881

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EXAMINER

WOO, STELLA L

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2614

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/822,121
Filing Date: March 30, 2001
Appellant(s): COLMENAREZ ET AL.

Anne E. Barschall
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 17, 2006 appealing from the Office action mailed April 8, 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct. The After-Final Amendment filed October 20, 2004 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: whether claims 1-8, 10-24 are obvious over Potts in view of Baker or Malkin under 35 USC 103(a) – section 8 of the Office action; and whether claims 9, 25 are obvious over Potts and Baker or Malkin and further in view of Chu under 35 USC 103(a) – section 9 of the Office action.

Appellant's allegation that "section 9 of the Office action would appear to be moot" is unfounded and misleading as the Board has not rendered any decisions.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,686,957	BAKER	11-1997
5,778,082	CHU et al	07-1998
6,704,048	MALKIN et al	03-2004
WO 99/60788	POTTS et al	11/1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-8, 10-24 are rejected under 35 USC 103(a) as being unpatentable over Potts et al (WO 99/60788 hereinafter Potts) in view of Baker (US PAT. NO. 5,686,957) or Malkin et al (US PAT. NO. 6,704,048 filed 8/27/98 hereinafter Malkin).

Potts teaches a video conference system for locating the speaker comprising an image pickup device (14) for generating image signals representative of an image, an audio pickup device (12) for generating audio signals representative of sound from an audio source, a processing means (audio source locator 28 which processes audio and video signals to locating the speaker) for processing the image signals and audio signals to determine a direction of the audio source relative to a reference point. Potts also teaches that at least two microphones can be used as an array for generating audio signals representative of a sound from an audio source. Note entire publication.

Potts discloses a video conference system substantially as claimed, as acknowledged and admitted by appellants on page 7 second and third full paragraph of

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the remarks filed on 2/26/04, except for the camera not being motionless during operations, e.g. Potts' camera moves instead of using electronic pan, tilt, and zoom (EPTZ) as disclosed by appellants.

However, it is old and well known in the art to replace mechanical moving pan, tilt, zoom functions of a camera with a camera that have electronic pan, tilt, and zoom (EPTZ) to eliminate manual operations of the camera, to improve reliability and reduced cost of the system, for example see Baker col. 7 lines 26-38; or Malkin col. 1 lines 16-28, col. 2 line 16 to col. 3 line 6. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Potts' camera to be a camera that have electronic pan, tilt, and zoom (EPTZ) to eliminate manual operations of the camera, to improve reliability and reduced cost of the system.

Claims 9, 25 are rejected under 35 USC 103(a) as being unpatentable over Potts as modified by Baker or Malkin, as applied to claims 1-8, 10-24 above, and further in view of Chu et al. (US PAT. NO. 5,778,082 hereinafter Chu).

Potts as modified by Baker or Malkin differs from the claimed invention in not disclosing the use of any array of two microphones. However, it is old and well known in the art to use spatially separated microphones to obtain the direction or location of speech or other acoustic signals from a common sound source identifying acoustic received signals representative of the sequence of signals, and determining the direction of the source based upon the acoustic received signals, for example see Chu. Chu also discloses it has applications to videoconferencing where it may be desirable to

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automatically adjust a video camera, such as by aiming the camera in the direction of a person who has begun to speak, for example see Chu's abstract, col. 1 lines 5-19, col. 2 lines 3-8. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Potts as modified by Baker or Malkin to use an array of two microphones to obtain the direction or location of speech or other acoustic signals from a common sound source identifying acoustic received signals representative of the sequence of signals, and determining the direction of the source based upon the acoustic received signals since it would produce the same results with relatively less components (microphones) and less cost.'

(10) Response to Argument

Appellants' remark that the Potts reference is long and complex is duly noted, however such remarks are not persuasive. The Potts reference which was provided by appellants in the 1/21/03 IDS, was applied by the EP office as evidenced in the EP search report (NPL document) submitted by appellants to the Office on 1/21/03. Therefore, appellants should be very familiar with this reference and have read the entire publication as to its relevance as applied by the EP patent office. Therefore to assert that reading the entire reference becomes a burden is absurd. The EP office cited the abstract, page 11 to page 54, all figures which is similar to the Examiner's position that the entire publication is relevant. In order to fully understand the Potts reference one must start with the background, summary of invention, e.g. pages 1-11, and then to understand how the system, device works one must read pages 14-34 for the video processing modules, pages 34-48 for the audio modules, and pages 49-54 for

alternate embodiments, pages 55-70 for the claims and 25 pages of drawings.

Therefore, the examiner is correct and proper in referring appellants to read the entire publication which is pertinent to the claimed invention since the entire publication as a whole is relevant and important to provide a complete understanding of the Potts system. Therefore, contrary to appellants' erroneous allegations, the examiner has specify what parts of the Potts reference are relevant in keeping with 37 CFR 1.104(c)(ii).

As to Malkin, as clearly set forth in the rejection (section 9 of the Final Office action) the examiner referred to Malkin col. 1 lines 16-28, col. 2 line 16 to col. 3 line 6 as being the relevant sections. Therefore, contrary to appellants' erroneous allegations, the examiner has specify what parts of the Malkin reference are relevant in keeping with 37 CFR 1.104(c)(ii).

Appellants' remarks that the Baker reference is withdrawn is misleading, erroneous and has mischaracterized, misconstrued the examiner's statements. As clearly stated in the 10/28/04 interview summary: "The after Final amendment overcame rejections using Baker as a primary reference only, paragraphs 5-7 in the final Office action and also overcame the 112, 2nd rejection." Anyone reading this would clearly understand that the rejections in paragraphs 5-7 using Baker as the primary reference was withdrawn. Nowhere does it stated that Baker is withdrawn as being a secondary reference. Therefore Baker is still a valid secondary reference and appellants' silence to Baker is viewed as a concession that Baker is valid and applicable prior art.

Appellants' remarks that the rejections are improper for failing to point out elements are not persuasive. As stated in the 1/30/03 Office action, elements in Potts were pointed out, and since appellants were able to respond to the Office action in the 3/31/03 amendment by amending the claims to include a stationary camera to distinguish over Potts clearly indicated that appellants have studied, read Potts and is aware of what Potts teaches. Also the above remarks regarding Potts is incorporated by reference herein. Since appellants have not previously raised any issue with the use of Potts throughout the prosecution history, it is viewed as a concession by appellants that Potts substantially teaches the claimed invention; and to raise the issue at appeal is moot.

The Potts reference: claim 1.

The examiner respectfully submits to the Board that paragraph 8 of the Final Office action does set forth a prima facie case of obviousness against the claimed invention.

The examiner respectfully submits that contrary to appellants' erroneous allegations (page 10 of the Brief), no mischaracterization was made on the part of the examiner. As clearly stated in appellants' 2/26/04 amendment, page 7 second and third paragraph of the remarks appellants attempted to overcome the 35 USC 112, first paragraph rejection by stating that the "determination of direction dependent at least at times on the video signal" is known, and relied on Potts as evidence that such was the case. In the third full paragraph appellants clearly stated "In addition, the documents that are incorporated herein by reference include detailed discussion of determining the

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direction of an audio source depending on video signals. For example, in WO 99/60788 on page 8 "A moving speaker, such as one giving a presentation, can be tracked by tracking his image." This clearly referred to Potts and does characterize the Potts reference as providing detailed discussion of determining the speaker at least at times on the video signal. Therefore appellants clearly have made the admission that the Potts reference provided detailed discussion of determining the speaker at least at times on the video signal.

Appellants' remarks that the Examiner misconstrued the claim are erroneous and unfounded. The Examiner stated in the rejection 'Potts discloses a video conferencing system substantially as claimed, as acknowledged and admitted [by appellants] on page 7 second and third full paragraphs of the remarks filed 2/26/04, except for the camera not being motionless during operation, e.g. Potts' camera does not have electronic pan, tilt, zoom (EPTZ).' Upon reading the rejection one would clearly realize the rejection is read as follows: Potts discloses a video conferencing system substantially as claimed, [as acknowledged and admitted on page 7 second and third full paragraphs of the remarks filed 2/26/04], except for the camera not being motionless during operation, e.g. Potts' camera does not have electronic pan, tilt, zoom (EPTZ); note the use of the commas. Therefore, anyone reading the rejection would clearly understand that the Examiner is referring to Pott's camera not being motionless during operation and not the claims "recite the camera not being motionless during operation". Thus, the Examiner did not misconstrue the claims.

Appellants' remark (page 11 of the Brief) that "the Examiner's statements about pan, tilt, zoom camera are completely irrelevant to Applicants' claims" clearly demonstrated that appellants failed to understand and appreciate the rejection as set forth in the Final rejection. As stated in page 4 line 12 of appellants' specification video camera 210 is stationary and in page 4 last line to page 5 line 1 appellants stated "videoconferencing system 100 can then electronically manipulate the video images to effectively pan, tilt, or zoom in or out, the video images from stationary camera 210", and further on page 5 lines 7-8 stated "pointing stationary video camera 210 toward the speaker by electronically mimicking a panning or tilting operation of stationary camera 210" for example. As clearly admitted by appellants in the 3/31/03 amendment page 7 lines 19-20, Potts differs from the claimed invention in not disclosing "a stationary image pickup device for generating image signal representative of an image" as claimed in amended claim 1. Baker and Malkin are cited and relied upon for their respective teachings of a stationary [motionless during operation] camera having electronic tilt, pan, zoom is used to replace a mechanical pan, tilt, zoom camera to eliminate manual operation of the mechanical camera, leads to improve reliability and reduce cost of the system, for example see Baker col. 7 lines 26-38; Malkin col. 1 lines 16-28, col. 2 line 16 to col. 3 line 6. These are reasons found within the applied prior art and are clearly set forth in the rejection and the rejections are proper and are not a result of improper hindsight as erroneously alleged by appellants. Thus Baker and Malkin when combined with Potts as applied in the Final rejection is clearly relevant to the claims and do render the claimed invention obvious under 35 USC 103(a).

In short, the Examiner has wholly read all the elements of claim 1 on the applied references; and made true and relevant statements about appellants' claims in support of the rejections; and further has complied with 37 CFR 1.104.

The Examiner respectfully submit to the Board that appellants have failed to point out any supposed errors in the obviousness rejection as set forth in the Final rejection and the Board is respectfully requested to sustain the Examiner's rejection.

Claim 5

Appellants' remarks are not persuasive and misleading. Again appellants have failed to fully understand the 35 USC 103(a) rejection. The video conferencing system is taught by Potts. The Examiner did not misconstrue the claim. In Potts as modified by Baker or Malkin the mechanical moving camera of Potts is replaced by a stationary motionless camera that performs pan, tilt, zoom functions electronically (see Baker col. 7 lines 26-38; Malkin col. 1 lines 16-28, col. 2 line 16 to col. 3 line 6 for example) in the videoconferencing system in the same manner as that disclosed in appellants' specification. The Examiner also set forth rationales, reasons, motivations found within the references (Baker, Malkin) to use a stationary motionless camera to establish a prima facie case of obviousness and are not a result of improper hindsight as erroneously alleged by appellants.

Accordingly, as mentioned above, the references (Baker, Malkin) are cited for a stationary motionless camera having electronic pan, tilt, zoom function are extremely relevant. The Examiner through the use of Baker, Malkin has completely and clearly provided motivation to use a motionless image pickup device that has electronic pan,

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tilt, zoom functions instead of a mechanical camera having mechanical pan, tilt, zoom functions. The Examiner accordingly respectfully submits to the Board that the burden of making a prima facie case of obviousness against the claim has been met and the Examiner respectfully submit to the Board that appellants have failed to point out any supposed errors in the obviousness rejection as set forth in the Final rejection and the Board is respectfully requested to sustain the Examiner's rejection.

Claims 2-4, 6-25

Note that the audio source locator 10 in Potts, Fig. 3 and the corresponding description clearly disclose comprising an audio based locator 70, a video based locator 60 (computer vision person detection), microphone array (multimodal speaker detection system); further Fig. 1 clearly showed an integrated housing, etc. Anyone reading the Potts reference would clearly be able to correlate Potts' elements to the claimed elements. As stated above since appellants have not previously raise any issue with the use of Potts throughout the prosecution history, it is viewed as concession by appellants that Potts substantially disclosed the claimed invention and to raise the issue at appeal is moot. The Examiner respectfully submit to the Board that appellants have failed to point out any supposed errors in the obviousness rejection as set forth in the Final rejection and the Board is respectfully requested to sustain the Examiner's rejection.

Appellants' remarks regarding claims 1 & 10 as set forth on page 4 is not persuasive and only shows appellants failed to understand the rejection. The above comments by the Examiner are incorporated by reference herein. As clearly stated in

the final rejection Baker or Malkin is relevant in shown why one of ordinary skill in the art would modify Potts' mechanical moving camera to be a motionless camera with the ability to provide electronic pan/tilt/zoom functions to make the system more reliable and reduce cost. These are reasons found in Baker and Malkin which were clearly stated in the rejection, e.g. see Baker col. 7 lines 26-38; Malkin col. 1 lines 16-28, col. 2 line 16 to col. 3 line 6. Therefore, Examiner accordingly respectfully submits to the Board that the rejection is proper and is not a result of improper hindsight.

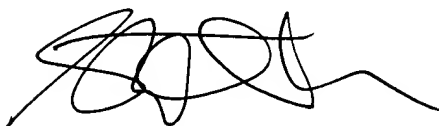
Appellants' remarks regarding claims 9 & 25 on pages 5-6 are not persuasive since appellants are requiring the physical combination of the references which is wrong in obviousness determinations; "the test for obvious is not whether the features of one reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the combination of references make obvious to one of ordinary skill in the art", see In re Bozek, 163 USPQ 545. Thus, appellants' remarks are not persuasive, and moot. The Examiner respectfully submit to the Board that appellants have failed to point out any supposed errors in the obviousness rejection as set forth in the Final rejection and the Board is respectfully requested to sustain the Examiner's rejection.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,




Stella Woo
Primary Examiner

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